Supreme Court, U.S.
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No. 05A355 (05-63)

IN THE

SUPREME COURT OF THE UNITED STATES

STEPHANIE S. ACTON,

**Petitioner*

vs.

CITY OF EATON: LESLIE RENNER, DAVE DAILY, PHILLIP ROMEO, JOHN PETRY; PAT TAYLOR, City Mayor and Treasurer of P.C. Youth Foundation; PREBLE COUNTY: CHRISTOPHER B. WASHINGTON; PC. Prosecutor, REBECCA FERGUSON; P.C. Sheriff TOM HAYES; HONORABLE WILFRED G. DUES, Judge of P.C. Court of Common Pleas and Founder of P.C. Youth Foundation; PARKER-HANNIFIN CORPORATION: WAYNE PINKSTAFF, JENNY HADDUX; SAMARITAN BEHAVIORAL HEALTH, INC., LORI MARCELLINO, Psy.; PREBLE COUNTY YOUTH FOUNDATION; PREBLE COUNTY MEDICAL CENTER: HAROLD ALLEN FERGUSON, DO., MARK STEVEN VOSLER, DO. and P.C. Health Commissioner.

Respondents,

On Petition for Writ of Certiorari to the United States Court of Appeals For The Second Circuit

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PETITION FOR REHEARING

STEPHANIE S. ACTON, *Pro Se
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II. The Court should consider and grant this Petition for Rehearing because the Statute of Limitations to file the original complaint by Ms. Acton was timely submitted as provided under Ohio Revised Code, section 2305.16 Disabilities; the tolling of statute of limitations; therefore Ms. Acton's filing on April 4, 2003, is not time barred..... 2

III. The Court should consider and grant this petition for Rehearing because (1) in the case of *Escobedo v. Illinois US. 478 (1964),* the court noted that a list of criteria is to be used to conclude that a suspect has been denied the assistance of counsel; (2) in a *1949 Supreme Court opinion, Watts v. Indiana, 338 US. 49, 59 (1949),* a statement was made that "any lawyer worth his salt will tell the suspect in no uncertain terms to make no statements to police under any circumstances. Plaintiff Ms. Acton not only met the criteria of point (1), but received a court appointed lawyer having no salt value at all as described in point (2)..... 7

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Reasons For Granting The Petition for Rehearing

I. The Court should consider and grant this Petition for Rehearing because this Petition puts forth a "substantial ground not previously presented" in the Petition for Certiorari, to wit, (1) the record discloses that the Denial for Rehearing entered 12-07-04 by the Sixth Circuit Court of Appeals, thereby upholding the ruling to Dismiss and Summary Judgment entered 11-28-03, by Honorable Michael R. Merz of US District Court Southern District Western Division at Dayton, Ohio, negates the right to Due Process of Law to Ms. Acton as provided within the Fifth and Fourteenth Amendment, and (2) exemplifies a double Abuse of Discretion given a fair preponderance of the evidence presented.

The US District Court Southern District Western Division at Dayton granted and entered an extension of 60 days time to Plaintiff Ms. Acton as she would use those 60 days to obtain Discovery as provided in Federal Rules of Court, Rule 34 (a) and (b); and most importantly to also afford the reasonable time to engage Rule 37, the submitting of a motion to compel Defendants to release incriminate evidences. Honorable Michael R. Merz' ruling to grant an extension of 60 days to Ms. Acton was docketed as number 81 on October 9, 2003.

However, 50 days later on November 28, 2003, docket 87 was entered by Honorable Merz wherein he submitted a ruling in favor of Defendants' to Dismiss and also entered Summary Judgment, rulings that effectively abused his own discretion of his own previous ruling wherein he granted 60 days of extended time to Plaintiff Ms. Acton.

Presumably Honorable Merz' error in application of judicial Federal Rule of Court was not intended as being biased or ill willed, however his entering final rulings in favor of the Defendants' at 10 days short of Ms. Acton's extended time, indeed manifests as being unreasonable and upon giving a fair preponderance of the evidence, simply does not add up; defies mathematic logic! *Beck v. Wings Field, Inc, C.C. A. Pa., 122 F.sd 114, .116, 117.*

Moreover, the Denial of Rehearing as entered by the Sixth Circuit Court of Appeals on 12-07-04, further compounds the errors of the lower Court thereby resulting in a double Abuse of Discretion. Not only are the judicial Federal Rules of Court abused, but also the rulings themselves are judicially abused. *State v. Draper, 83 Utah 115, 27 P.2d 39; Exparte Jones, 246 Ala. 433, 20 So.2d 859.862.*

In summary, the abuses of both judicial rule and judicial ruling by these Honorable Judges are contributing factors that deny Plaintiff Ms. Acton her equal right to procedural fairness, Due Process, as provided within the Fifth and Fourteenth Amendment.

II. The Court should consider and grant this Petition for Rehearing because the Statute of Limitation to file the original complaint by Ms. Acton was timely submitted as provided under Ohio Revised Code, Section 2305.16 Disabilities, the tolling of statute of limitations; therefore Ms. Acton's filing on April 4, 2003 is not time barred.

ORC Section 2305.16 states, in part, "if a person entitled to bring any action mentioned ... is, at the time the cause of action accrues, ... of unsound mind, the person may bring it within the respective times... , after the disability is removed...

After the cause of action accrues, if the person entitled to bring the action becomes of unsound mind and is adjudicated as such by a court of competent jurisdiction or is confined in an institution or hospital under a diagnosed condition or disease which renders the person of unsound mind, the time during which the person is of unsound mind and so adjudicated or so confined shall not be computed as any part of the period within which the action must be brought."

Under Note 1 of ORC 2305.16 it states, "When a federal court adopts the state period of limitations, it will usually adopt the entire framework of the state's law, including statutory provisions relating to the tolling and the like, and the judicial construction and interpretation thereof."

Davis v. Drackett Products Co. (S.D. Ohio 1982) 536 F. Supp. 694.

Under Note 3 of ORC 2305.16 it states, "The phrase 'of unsound mind' includes every species of mental deficiency or derangement." *Lowe v. Union Trust Co. (Ohio 1931) 124 Ohio St. 302, 178 N.E. 255, 10 Ohio Law Abs. 702, 35 Ohio Law Rep. 290.*

Under Note 4 of ORC 2305.16 it states, in part, "... a US district court in Ohio will ... apply RC 2743.16, which tolls the statute only if the prisoner is of unsound mind." *Vargas v. Jago (S.D. Ohio 1986) 636 F. Supp. 425.*

The pertinent facts of Ms. Acton's case against the City of Eaton, et al., as related to point II of this Petition are as follows:

1. On 02-20-01, Ms. Acton expressed her First Amendment right to freedom of speech, and vocally announced before Eaton City Council members and a room packed with people, that she is aware of a degree of corruption within the government of Eaton and Preble County further vocalizing that she has proof of her accusations.
2. On or about 03-08-01, Eaton's Police Chief Phillip Romeo submitted a sworn affidavit to the Probate Court of Judge Wilfred Dues wherein he testifies to the derangement of Ms. Acton stating that she is homicidal, suicidal, delusional, and possesses strong religious beliefs. It appeared as though Chief Romeo had a great concern for the life of a member, or members of the community.
3. On or about 03-08-01, Judge Dues enlists Samaritan Behavioral Health, a Preble County contracted mental health service, to either confirm or negate Chief Romeo's concern about the derangement of Ms. Acton.
4. On or about 03-13-01, a non-medical doctor, Psychologist Lori Marcellino, did submit to Judge Dues a sworn affidavit confirming the derangement of Ms. Acton also stating in agreement that Ms. Acton was, indeed, homicidal, suicidal, delusional,

and possesses strong religious beliefs, and requested of Judge Dues to "pink slip" Ms. Acton to be confined within Twin Valley Psychiatric Systems, a state forensic mental hospital located in Montgomery County, for further evaluation.

5. Ms. Acton did not have representation, nor was she aware that she needed representation, therefore she was unaware to request representation, but most pertinent was that she did not dispute, either in person or within a written statement, the affidavit testimony of either Chief Romeo or non-medical doctor, Psychologist Lori Marcellino. In other-words, Ms. Acton neither confirmed nor denied being homicidal, suicidal, delusional, or possessing strong religious beliefs to Judge Dues.
6. On 03-13-01, Preble County Probate Judge Dues enters a ruling to have Ms. Acton "pink slipped" to Twin Valley Psychiatric Systems, for an involuntary mental evaluation; further giving instruction that gives the authority to any police officer to immediately lay hands on Ms. Acton, to detain Ms. Acton, and to transport Ms. Acton to TVPS, wherein TVPS internal police officers will also lay hands on Ms. Acton and continue to detain her behind secured and locked doors until such time as an expert evaluation may or may not give rise to the release of Ms. Acton.
7. On 03-13-01, while out of his jurisdiction, an Eaton City Police Officer did lay his hands on Ms. Acton, he did not read to her *Miranda* Rights, he did detain Ms. Acton by applying handcuffs to her wrists behind her back and stood her to the rear of his cruiser until such time when Chief Romeo appeared on scene outside of his jurisdiction, and he too did lay his hands on Ms. Acton, spun her around and further publicly expressing his concerns of the homicidal derangement of Ms. Acton by double restraining her as he applied a nylon cable tie to her already cuffed wrists; Chief Romeo did not read to her Miranda

Rights, but he did escort her to the back door of the first officer's cruiser and shoved her into the backseat then slammed the door shut.

8. On 03-13-01, following the transportation of restrained Ms. Acton into Montgomery County to the site of TVPS, wherein staff did also lay their hands on Ms. Acton and did detain Ms. Acton within the secured and locked doors of TVPS, Ms. Acton was not read *Miranda* Rights, however she was then in custody with many criminally insane clients referred to as consumers. Further, for the next 7 days Ms. Acton was interrogated multiple times without legal representation or legal advisement by TVPS staff which included a medical doctor Psychiatrist who continually referred to documentation submitted to them by Judge Dues, and also diagnosed Ms. Acton as being paranoid schizophrenic, delusional-grandiose type, bi-polar manic, unspecified personality disorder, and was then prescribed drug therapy, all of which Ms. Acton refused to ingest.
9. Finally, 7 days after being detained and in the custody of TVPS, after having no legal representation or advisement for 7 days, on 03-20-01, Ms. Acton briefly met a court appointed attorney, who had little to say and gave no advice, just minutes prior to a hearing on site of TVPS. During that hearing, a TVPS Psychiatrist testified to Judge George Guanaris of Montgomery County Probate as to the many diagnosis of Ms. Acton. With no advice from Michael Holz, her court appointed counsel, desiring another independent evaluation of her choice, Ms. Acton spoke out and told the judge that she has Aetna insurance and then requested to have an unbiased, impartial evaluation?"
10. On 03-20-01, Judge Guanaris did grant a continuance for the purpose of Ms. Acton to obtain another evaluation by her own choosing. He set no date for that continued hearing.

11. Ms. Acton remained detained and repeatedly requested to see her lawyer and to be assisted in arranging for another evaluation by another psychiatrist, however she received no legal assistance from her court appointed lawyer, Michael Holz, and she received no assistance from TVPS staff to engage another unbiased and impartial evaluation. TVPS staff continued to prescribe and treat Ms. Acton for the symptoms of the diagnosed mental disorders by offering specific drug therapy to Ms. Acton, who continued to refuse to ingest those drugs.
12. On 04-05-01, TVPS staff submitted a pleading to request of the court of Judge Guanaris to force Ms. Acton to ingest the prescribed drug therapy by granting to TVPS the court order to do so.
13. On 04-05-01, Ms. Acton was escorted to the hearing room where Judge Guanaris did continue Ms. Acton's hearing from 03-20-01. During this hearing Judge Guanaris received and considered testimony from yet another TVPS staff Psychiatrist, who submitted testimony that he had evaluated Ms. Acton and found no obvious disorder. As fate would have it, the psychiatrist and psychologist who diagnosed Ms. Acton with multiple mental disorders was away at a professional conference, giving rise for another TVPS psychiatrist to consult with Ms. Acton, and he did so without giving weighted validity to the documentation from Judge Dues' court.
14. On April 5, 2001, Judge Guanaris ordered the dismissal of Ms. Acton's case, ordered that the case be expunged, and ordered the release of Ms. Acton from her detainment that was initiated on 03-13-01.
15. On 04-05-01, the split second that Judge Guanaris slammed his gavel upon his bench, Ms. Acton was released from the hands of Eaton Chief of Police Phillip Romeo, released from the hands of Preble County Probate Judge Dues, released from the hands of Samaritan Behavioral Health, released from the hands of non-medical doctor Lori Marcellino,

released from the hands of TVPS staff, released from the hands of Montgomery County Probate Judge Guanaris.

In summary, On March 13, 2001, Ms. Acton was judicially considered as being deranged as evidenced by the implementation of a ruling of Preble County Probate Judge Wilfred Dues, wherein he ordered the involuntary mental evaluation of Ms. Acton, resulting from sworn affidavits submitted by only Eaton Chief of Police Phillip Romeo and non-medical doctor, Psychologist Lori Marcellino.

While in the restrained custody of police of Eaton's jurisdiction, Ms. Acton was handed over to the custody of Montgomery County and the State of Ohio's TVPS at Dayton. Further, Ms. Acton remained institutionalized, confined and imprisoned, diagnosed with multiple mental disorders and prescribed psychotropic drug therapy, which she refused to ingest, giving rise on April 5, 2001, for TVPS to submit a motion to obtain a court order from Montgomery County Probate Judge Guanaris to force Ms. Acton to ingest those many prescribed drugs.

However, on April 5, 2001, Judge Guanaris did hear sworn testimony from yet another TVPS Psychiatrist who submitted to the court that he did not observe any obvious mental disorder, hence Ms. Acton's case was dismissed, expunged, and Ms. Acton was released from custody, freed and allowed to walk out of TVPS.

III. The Court should consider and grant this Petition for Rehearing because (1) in the case of *Escobedo v. Illinois US 478 (1964)*, the court noted that a list of criteria is to be used to conclude that a suspect has been denied the assistance of counsel; (2) in a 1949 Supreme Court opinion, *Watts v. Indiana, 338 US. 49, 59 (1949)*, a statement was made, in part, "any lawyer worth his salt will tell the suspect in no uncertain terms to make no statements to police under any circumstances. Plaintiff Ms. Acton not only met the criteria of point (1), but she received a court appointed lawyer having no salt value at all as described in point (2).

Point (1). In the case of, Escobedo v. Illinois US 478 (1964), the police did not formally charge Escobedo, however, "he was in custody" and "couldn't walk out the door".

The court noted a list of criteria to be met to conclude that a suspect has been denied the assistance of counsel. That list is as follows: (1) the investigation is no longer a general inquiry, but has begun to focus on a particular suspect. (2) the suspect has been taken into custody. (3) police carries out a process of interrogations that lends itself to eliciting incriminating statements. (4) suspect has requested and has been denied an opportunity to consult with his lawyer. (5) the police have not effectively warned him of his absolute constitutional right to remain silent.

In summary, (1) Ms. Acton was not a suspect in a general investigation, she was the individual being investigated; the suspect. (2) Ms. Acton was taken into custody and remained in custody, from 03-13-01 to 04-05-01; was detained and confined with other "consumers" who each one was serving out criminal sentencing for criminal violations such as aggravated assault, rape, murder, etc. (3) Further, the TVPS staff interrogated Ms. Acton from the evidences submitted by Judge Dues, including Chief Romeo's affidavit accusing Ms. Acton of being homicidal and suicidal, both criminal and against the law. Although TVPS staff did not wear police badges, Ms. Acton recognized them as an extension of Eaton's Chief of Police Phillip Romeo, and they did so quite effectively. Ms. Acton was very fearful and unwittingly believed that she had better not be silent and answer any questions they asked. (4) Ms. Acton repeatedly requested of TVPS staff to assist her in getting legal assistance. She spoke to court appointed lawyer, Michael Holz for only a few minutes 7 days into her detainment. He gave her no advice nor did he advise Ms. Acton to remain silent unless he was there with her. In other-words, she had no legal representation. (5) No one informed Ms. Acton to remain silent until on or about 04-04-01 when Ms. Acton's husband retained an unbiased professional lawyer who immediately acted on Ms. Acton's case, hence, the hearing did occur

wherein Ms. Acton was released on 04-05-01, not because of a thing Michael Holz did because he did nothing, rather Ms. Acton finally received legal representation. Period!

(Point 2). In a 1949 Supreme Court opinion, *Watts v. Indiana, 338 US. 49, 59 (1949)*, "To bring in a lawyer means a real peril to solution of crime because, under our advisory system, he deems that his sole duty is to protect his client, guilty or innocent, and that in such capacity he owes no duty whatsoever to help society solve its crime problem. Under this conception of criminal procedure, any lawyer worth his salt will tell the suspect in no uncertain terms to make no statement to police under any circumstances".

Ms. Acton received no known court appointed lawyer while being investigated by Judge Dues court in March of 2001. Ms. Acton received no known court appointed lawyer at the instant she was detained on 03-13-01, at TVPS. Ms. Acton was introduced to a court appointed lawyer, Michael Holz, on 03-20-01, day 7 of her confinement in TVPS. Ms. Acton received no advice or defense from this court appointed lawyer who left her high and dry in the nut house behind closed and locked doors with no legal representation.

In summary, from the perspective of an alleged mental case, or "consumer", with homicidal, suicidal, delusional, and strong religious beliefs, who was detained and in the custody of a state mental hospital, the court appointed lawyer was obviously biased with the opinion that his client is nuts and wouldn't realize that she was entitled to a lawyer to begin with, much less be able to prove that she wasn't properly defended. After all, the client is nuts and resides in a nut house with other nuts. Who would believe her?

If the legal assistance that Ms. Acton received is the normal for those "consumers" that are locked-up within the mental health system, then someone needs to address this outrageous issue. In Ms. Acton's experience, she had no rights, no legal representation, and no way to get out of the institution short of actually receiving an exceptionally professional psychiatrist.

Suspects can bond out of jail, but for "consumers", bonding out is not an option.

Conclusion

The question that puzzles Ms. Acton and should equally puzzle this court, is, if Chief Romeo truthfully had legitimate cause to submit an affidavit swearing that he considers Ms. Acton as being "homicidal", when Ms. Acton was finally evaluated and possessed no obvious mental disorder to use as a justifiable excuse to commit homicide, why did Chief Romeo neglect to protect whomever he presumed to be in danger of being murdered by the subsequent arresting of Ms. Acton for the actions of premeditation to commit the murder that he was so concerned about in the first place? Ms. Acton has never been criminally or civilly prosecuted for anything relating to Chief Romeo's accusations of being homicidal which he submitted to Judge Dues.

The answer to this question lies within the fact that the Preble County residing Defendants acted jointly and individually, to conspire and engage themselves with Judge Dues in the malicious prosecution of Ms. Acton, *(500 West 174 St. v. Vasquez, 67 Misc. 2d 993, 325 N.Y. S.2d 256, 258)*, as a way to punish her for expressing her freedom of public speech, which if taken seriously and acted upon, would interfere with their individual and joint multi-million dollar business plans. So they made a collective decision to engage themselves in the manipulation of the court system via the abuse of judicial discretion by Judge Dues, *(Harvey v. State, Okl. Cr., 458 P.2d 336, 338)*, wherein he also abused the mental health system, to instill an unforgettable fear into the psyche of Ms. Acton and to punish her for exercising her right to the provisions under the First Amendment. In other-words their actions, both individually and jointly, were conspired and acted out to simply shut Ms. Acton' s mouth, at any cost, even if it killed her!

Hence, this Petition for Rehearing should be granted.

Respectfully Submitted,

Stephanie S. Acton

Stephanie S. Acton, Pro Se

CERTIFICATE OF GOOD FAITH

The undersigned hereby certifies that this petition for rehearing is restricted to the grounds specified in Rule 44.2 of the Rules of the Supreme Court and is presented in good faith and not for delay.

On this 25th day of November, 2005

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